MONTANA LEGISLATIVE HISTORY

Chapter 612 1979

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Senate BILL NO. 221

INTRODUCED BY Tom Jay J. Brown

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH ADMINISTRATIVE PROCEDURES FOR ENFORCING SUPPORT FOR DEPENDENT CHILDREN."

WHEREAS, it is the responsibility of the state through the department of revenue to limit the expenditure of public assistance funds, whenever possible, in order that such funds not be spent if there are private funds available, or which can be made available by judicial process or otherwise, to partially or completely meet the financial needs of the children of this state. The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.

WHEREAS, the purpose of this act is to provide the state, through the department of revenue, a more effective and efficient way to effect the support of dependent children by the person or persons who, under the law, are primarily responsible for such support and to lighten the heavy burden of the taxpayer, who in many instances is paying toward the support of dependent children while those

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persons primarily responsible are avoiding their obligations.

WHEREAS, common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven wholly effective or efficient in coping with the increasing incidence of financial dependency. The increasing workload of courts and prosecuting attorneys has made such remedies uncertain, slow, and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations.

THEREFORE, it is the intent of this act that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children be augmented by additional remedies as set forth in sections 14 through 39 and directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to and not in lieu of existing law. It is declared to be the public policy of the state that this act be construed and administered to the end that children shall be maintained from the resources of

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responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [this act] the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Dependent child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States and who is a recipient of public assistance.

(3) "Director" means the director of the department of revenue or his authorized representative.

(4) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(5) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary,

commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(8) "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

(9) "Responsible parent" means the natural or adoptive parent of a dependent child.

(10) "Support debt" means the sum created by the failure to provide support to a dependent child under the laws of this state or the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support.

Section 2. Department of revenue -- powers and duties regarding collection of support debt. (1) Whenever the department of social and rehabilitation services receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one

parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services shall promptly refer the matter to the department of revenue for action under the provisions of [this act], the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the person obligated for support or any minor child in that person's custody to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts, checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any action pursuant to [this act], the department is a real party in interest upon the payment of public assistance. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that obligor for support provided unless the department has consented to the agreement in writing.

(6) The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do.

(7) The department shall be subrogated to the right of the child or children or person having the care, custody, and control of the child or children to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus spent.

(8) If a district court enters judgment by order for an amount of support to be paid by an obligor parent, the department shall be subrogated to the debt created by the order and the money judgment shall be determined to be in

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favor of the department. This subrogation shall apply to temporary spouse support orders, family maintenance orders, and alimony orders up to the amount paid by the department in public assistance money to or for the benefit of a dependent child or children but allocated to the benefit of the children on the basis of providing necessities for the caretaker of the children.

(9) The department may adopt and enforce such rules as may be necessary to carry out the provisions of [this act].

(10) The department, for the purposes mentioned in [this act], through its director or his authorized representatives, may administer oaths to certify official acts, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

(11) The department may initiate any civil proceedings necessary to secure reimbursement from the parent or parents of minor dependent children for all money spent by the state in providing public assistance or services to dependent children.

Section 3. Support enforcement services. (1) The department may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support. Actions may be taken under the

the provisions of Title 45, chapter 5, the abandonment or nonsupport statutes, or other appropriate statutes of this state, including but not limited to remedies established in Title 45, chapter 5, to establish and enforce the support obligations.

(2) The department may establish by rule reasonable standards necessary to limit applications for support enforcement services. These standards shall take into account the earnings, income, and other resources already available to support the person for whom a support obligation exists.

(3) The department may charge a fee as compensation for services rendered in establishment of or enforcement of support obligations. This fee shall be agreed on in writing with the custodian or guardian of the person for whom a support obligation is owed or that person if no custodian or guardian exists. An initiation fee as a portion of the collection fee may be charged the applicant by the department. The department shall by rule establish reasonable fees for support enforcement services, and the schedule of fees shall be made available to all applicants for support enforcement services. The department may, upon a showing of necessity, waive or defer any such fee.

Section 4. Cooperation by person having custody of child. Any person having the care, custody, or control of

any dependent child or children shall cooperate with the department in establishing the paternity of such child and obtaining support payments.

Section 5. Payment of support money collected to support enforcement and collections unit -- notice. If written notice by the department is given to the responsible person or to the clerk of the court, if appropriate, that the children for whom a support obligation exists are receiving public assistance, then any support money paid by the person or persons responsible for support as a result of any action shall be paid through the support enforcement and collections unit of the department of revenue.

Section 6. Petition for support order by married parent with minor children receiving public assistance. (1) Any married parent with minor children, natural or legally adopted, who is receiving public assistance may apply to the district court of the county in which the parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for the parent's support and the support of the parent's minor children by filing in the county a petition setting forth the facts and circumstances upon which the parent relies for the order.

(2) If it appears to the satisfaction of the court that the parent is without funds to employ counsel, the

department may file a petition on behalf of the parent. If satisfied that a just cause exists, the court shall direct that a citation be issued to the spouse requiring that spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter.

Section 7. Petition for support order by married parent with minor children receiving public assistance -- powers of court. (1) After hearing the petition for an order of support, the court shall make an order granting or denying it and fixing the terms and amount of the support.

(2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, make such decree or orders as are equitable in view of the circumstances of both parties, and punish violations as other contempts are punished.

Section 8. Petition for support order by married parent with minor children receiving public assistance -- waiver of filing fees. The court may upon satisfactory showing that the petitioner is without funds to pay the filing fee, order that the petition and other papers be filed without payment of the fee.

Section 9. Financial statements by parent whose absence is basis of application for public assistance -- penalty. (1) Any parent in the state whose absence is the basis upon which an application is filed for public

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assistance on behalf of a child shall complete a statement, under oath, of his current monthly income, his total income over the past 36 months, the number of dependents for whom he is providing support, the amount he is contributing regularly toward the support of all children for whom application for such assistance is made, his current monthly living expenses, and all other information pertinent to determining his ability to support his children. The statement shall be provided upon a demand made by the department. If assistance based upon the application is granted on behalf of the child, additional statements shall be filed as required by the department until the child is no longer receiving public assistance.

(2) Failure to comply with this section is a misdemeanor.

Section 10. Scale of suggested minimum contributions. (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under [this act]. The scale shall:

(a) include consideration of gross income;

(b) authorize an expense deduction for determining net income;

(c) designate other available resources to be

considered;

(d) specify the circumstances which should be considered in reducing support contributions on the basis of hardship.

(2) The department shall accept and compile pertinent and reliable information from any available source in order to establish a minimum scale of suggested contributions. Copies of the scale shall be made available to courts, county offices, county attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of [this act]. Attorneys admitted to practice in Montana may have access to the minimum scales of suggested contribution.

(3) No county, court, officer, or agency may be required to use this scale.

Section 11. Central unit for information and administration -- cooperation enjoined -- availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) To effectuate the purposes of this section, the director may request from state, county, and local agencies

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(2) If it appears to the satisfaction of the court that the parent is without funds to employ counsel, the

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(2) To effectuate the purposes of this section, the director may request from state, county, and local agencies

all information and assistance as authorized by [this act]. All state, county, and city agencies, officers, and employees shall cooperate in the location of parents who have abandoned or deserted or are failing to support children receiving public assistance and shall on request supply the department with all information available relative to the location, income, and property of the parents.

(3) Any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act.

Section 12. Department exempt from fees. No filing or recording fees, court fees, fees for making copies of documents, or fees for service of process may be required from the department by any county clerk, county auditor, sheriff, or other county officer for the filing of any actions or documents authorized by [this act] or for the service of any summons or other process in any action or proceeding authorized by [this act].

Section 13. Debt to state by natural or adoptive parents -- limitations. (1) Except as provided in subsection

(2), any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing the state of Montana by the natural or adoptive parent or parents who are responsible for the support of such children in an amount equal to the amount of public assistance money so paid.

(2) Where there has been a district court order established, the debt shall be limited to the amount provided for by the order.

(3) Where a child has been placed in foster care, and a written agreement for payment of support has been entered into by the responsible parent or parents and the department, the debt shall be limited to the amount provided for in the agreement. However, if a court order for support is or has been entered, the provisions of the order shall prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in such agreements or modifications of such agreements based on changed circumstances.

Section 14. Support debt based upon subrogation to or assignment of judgment -- notice -- contents -- action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgment created by a district court

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order. The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 20 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any district court order to which the department is subrogated or has an assigned interest;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt.

(3) Action to collect the subrogated or assigned support debt by lien and foreclosure or distraint, seizure and sale, or order to withhold and deliver shall be lawful after 20 days from the date of service upon the debtor or 20 days from the receipt or refusal by the debtor of the notice of debt.

Section 15. Notice of support liability based upon payment of public assistance -- notice -- contents --

collection warrant -- fair hearing. (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of any dependent child or children. The notice of liability shall be served upon the responsible parent in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the recipient and the name of the child or children for whom assistance is being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the responsible parent make answer within 20 days of the date of service to the department stating defenses to liability under [section 13];

(e) a statement that if no answer is made on or before 20 days from the date of the service the support debt shall be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the responsible parent will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver.

(3) If no answer is had by the department to the notice of liability on or before 20 days of the date of service, the support debt shall be assessed and determined subject to the computation and the department shall issue a collection warrant authorizing a collection action under [this act].

(4) If the responsible parent, within 20 days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under [section 13], the responsible parent may receive a fair hearing pursuant to [sections 20 and 22]. The decision of the department in the hearing shall establish the obligation of the responsible parent, if any, for repayment of public assistance funds spent to date as an assessed and determined support debt.

Section 16. Finding of support liability based upon payment of public assistance -- filing and serving of liens -- bond to release liens -- action to collect. (1) If the department reasonably believes that the parent is not a resident of this state or is about to move from this state or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise

dispose of property which could be made subject to collection action to satisfy the support debt the department may file and serve liens pursuant to [sections 19 and 20] during the pendency of the fair hearing or thereafter, whether or not appealed. No further action under [section 21], [section 26], and [section 27] may be taken on such liens until final determination after fair hearing and/or appeal. The department shall in such cases make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The responsible parent may furnish a bond satisfactory to the department during pendency of the hearing or thereafter, and in such case liens filed shall be released. If the decision resulting from the hearing is in favor of the responsible parent, all liens filed shall be released.

(2) The department may commence action under the provisions of [this act] to collect the support debt on the date of issuance of the decision resulting from the hearing.

Section 17. Notice and finding of financial responsibility of responsible parent -- administrative procedure. (1) In lieu of the hearing and appeal procedures provided in [sections 16 and 17], the department may, in the absence of a district court order, serve on the responsible parent a notice and finding of financial responsibility requiring a responsible parent to appear and show cause at a

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hearing held by the department why the finding of liability and the amount of support liability should not be finally ordered. This notice and finding shall relate to the support debt accrued or accruing under [this act] and/or Title 53, chapter 4, including periodic payments to be made in the future for the period of time any child of the responsible parent is in need. The hearing shall be held pursuant to [this act] and the rules of the department, which shall provide for a fair hearing.

(2) The notice and finding of financial liability shall be served in the same manner prescribed for the service of a summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than 20 days from the date of service to request in writing a hearing, notice of which shall be served upon the department personally or by registered or certified mail. If no request is made, the notice and finding of liability becomes final. If a request is made, the execution of notice and finding of liability shall be stayed pending the decision on such hearing or any direct appeal to the courts from the decision.

(3) The notice and finding of financial liability shall include:

(a) the amount the department has determined the responsible parent owes, the support debt accrued or accruing, and, as appropriate, the amount to be paid thereon each month, all computable on the basis of the amount of the monthly public assistance payment previously paid or need alleged and the ability of the responsible parent to pay all or any portion of the debt;

(b) a statement of the name of the recipient or custodian and the name of any child for whom assistance is being paid or need is alleged; or a statement of the amount of periodic future support payments for which financial liability is found;

(c) a statement that the responsible parent may object to all or any part of the notice and finding and request a hearing to show cause why he should not be determined to be liable for any or all of the past and future debt determined and the amount to be paid thereon;

(d) a statement that if the responsible parent fails to request a hearing that the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed, determined, and ordered by the department and that this debt is subject to collection action;

(e) a statement that the property of the debtor, without further advance notice or hearing, will be subject

to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver to satisfy the debt.

Section 18. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear -- entry of findings. (1) The administrative hearing is defined as a "contested case".

(2) The administrative hearing may be held in the county of residence or other county convenient to the responsible parent.

(3) If a hearing is requested, it shall be scheduled within 30 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the alleged responsible parent under [section 13] and shall also determine the amount of periodic payments to be made to satisfy past, present, or future liability under [section 13]. In making these determinations, the hearing officer shall include in his consideration the scale of suggested minimum contributions adopted under [section 10].

(5) If the responsible parent fails to appear at the hearing, upon a showing of valid service, the hearing officer shall enter a decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed, determined, and subject to collection action. Within 20 days

of entry of the order, the responsible parent may petition the department to vacate the order upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(6) The hearing officer shall, within 20 days of the hearing, enter findings, conclusions, and a final decision determining liability and responsibility and/or future periodic support payments. The determination of the hearing officer entered pursuant to this section shall be entered as an order unless such findings are set aside pursuant to [section 33] and shall limit the support debt under [section 13] to the amounts stated in the decision.

(7) The decision establishing liability and future periodic support payments is superseded upon entry of a district court order for support to the extent the district court order is inconsistent with the hearing order or decision. In the absence of a district court order the responsible parent may petition the department for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances to require the other party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning party on the nonmoving party in the manner

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of a summons in a civil action. A hearing shall be set not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

(8) The department, in its original determinations, and the hearing officer, in making determinations based on objections to original determinations or on petitions to modify, shall consider the standards promulgated for determination of support payments used by the district court of the county of residence of the responsible parent.

(9) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by the hearing officer.

Section 19. Assertion of lien -- effect. (1) Twenty-one days after receipt or refusal of notice of debt under provisions of [section 14] or 21 days after service of notice of debt or as otherwise appropriate under the provisions of [sections 15 and 16], a lien may be asserted by the department upon the real or personal property of the debtor. The claim of the department for a support debt not paid when due constitutes a lien against all property of the debtor with priority of a secured creditor. This lien is separate and apart from and in addition to any other lien

provided for in this title. The lien is attached to all real and personal property of the debtor on the date of filing of such statement with the county clerk and recorder of the county in which the property is located. A lien against earnings is attached and is effective subject to the service requirements of [section 20] upon filing with the county clerk and recorder of the county in which the employer is doing business or maintains an office or agent for the purpose of doing business.

(2) Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision, or department of the state having notice of the lien any property that may be subject to the support lien, the property may not be paid, released, sold, transferred, encumbered, or conveyed, except as provided for by the exemptions contained in [sections 22 and 26], unless a written release or waiver signed by th department has been delivered to the person, firm, corporation, association, political subdivision, or department of the state or unless a determination has been made in a fair hearing pursuant to [sections 15 and 16] or by a district court ordering release of the support lien on the basis that no debt exists or that the debt has been satisfied.

Section 20. Service of lien. The department may at any

time after filing of a support lien serve a copy of the lien upon any person, firm, corporation, association, political subdivision, or department of the state in possession of earnings, deposits, or balances held in any bank account of any nature that are due, owing, or belonging to the debtor. The support lien shall be served upon the person, firm, corporation, association, political subdivision, or department of the state either in the manner prescribed for the service of summons in a civil action or by certified mail return with receipt requested. No lien filed under [section 19] shall have any effect against earnings or bank deposits or balances unless it states that amount of the support debt accrued and unless service upon the person, firm, corporation, association, political subdivision, or department of the state in possession of earnings or bank accounts, deposits, or balances is accomplished pursuant to this section.

Section 21. Order to withhold and deliver -- issue and service -- contents -- effect -- delivery of property -- bond to release. (1) After service of a notice of debt as provided for in [section 14] stating a support debt accrued or accruing based upon subrogation to or assignment of the amount required to be paid under any district court order or whenever a support lien has been filed pursuant to [section 19], the department may issue to any person, firm,

corporation, association, political subdivision, or department of the state an order to withhold and deliver property of any kind including but not limited to earnings that are due, owing, or belonging to the debtor, when the department has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state property that is due, owing, or belonging to the debtor. The order to withhold and deliver that shall also be served upon the debtor shall state the amount of the support debt accrued and shall state in summary the terms of [sections 22 and 23]. The order to withhold and deliver shall be served in the manner prescribed for the service of a summons in a civil action or by certified mail with return receipt requested.

(2) Any person, firm, corporation, association, political subdivision, or department of the state upon whom service has been made is required to answer the order to withhold and deliver within 20 days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein. In the event there is in the possession of any such person, firm, corporation, association, political subdivision, or department of the state any property which may be subject to the claim of the department, the property shall be withheld

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immediately upon receipt of the order to withhold and deliver and shall after the 20-day period, upon demand, be delivered to the department.

(3) The department shall hold the property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the department a bond satisfactory to the department, conditioned upon final determination of liability. If money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision, or department of the state subject to withdrawal by the debtor, the money shall be delivered by remittance payable to the order of the department.

(4) Delivery to the department of the money or other property held or claimed satisfies the requirement of the order to withhold and deliver. Delivery to the department serves as full acquittance, and the state warrants that it shall defend and hold harmless for such actions persons delivering money or property to the department pursuant to [this act]. The state also warrants that it shall defend and hold harmless for such actions persons withholding money or property pursuant to [this act], except for the exemptions contained in [sections 22 and 26].

Section 22. Certain amount of earnings exempt from lien or order. Whenever a support lien or order to withhold and deliver is served upon any person, firm, corporation, association, political subdivision, or department of the state asserting a support debt against earnings and there are in the possession of that person, firm, corporation, association, political subdivision, or department of the state any such earnings, 50% of the disposable earnings is exempt and may be disbursed to the debtor, whether the earnings are paid or to be paid weekly, monthly, or at other regular intervals and whether there be due the debtor earnings for 1 week or for a longer period. The lien or order to withhold and deliver shall continue to operate and require the person, firm, corporation, association, political subdivision, or department of the state to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until the entir amount of the support debt stated in the lien or order to withhold and deliver has been withheld.

Section 23. Civil liability upon failure to comply with order or lien. Should any person, firm, corporation, association, political subdivision, or department of the state fail to answer to an order to withhold and deliver within the time prescribed in [this act]; or fail or refuse to deliver property pursuant to the order; or after actual

notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person; or fail or refuse to surrender upon demand property distrained under [section 26]; or fail or refuse to honor an assignment of wages presented by the department, the person, firm, corporation, association, political subdivision, or department of the state is liable to the department in an amount equal to 100% of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or assignment of wages, together with costs, interest, and reasonable attorney fees.

Section 24. Release of excess to debtor. Whenever any person, firm, corporation, association, political subdivision, or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus $100, that person, firm, corporation, association, political subdivision, or department of the state may, without liability under [this act], release the excess to the debtor.

Section 25. Banks and savings and loan associations -- service effective only as to branch office served. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices,

service of a lien or order to withhold and deliver or any other notice or document authorized by [this act] is only effective as to the accounts, credits, or other personal property of the debtor in the particular branch upon which service is made.

Section 26. Distraint, seizure, and sale of property subject to liens. Whenever a support lien has been filed pursuant to [section 19], the department may collect the support debt stated in the lien by the distraint, seizure, and sale of the property subject to the lien. The department shall give notice to the debtor and any person known to have or claim an interest in the property of the general description of the property to be sold and the time and place of the sale. The notice shall be given to such persons by certified mail with return receipt requested or by service in the manner prescribed for the service of a summons in a civil action. A notice specifying the property to be sold shall be posted in at least two public places in the county in which the distraint has been made. The time of sale shall be not less than 10 or more than 20 days from the date of posting of the notices. The sale shall be conducted by the department, which shall proceed to sell such property by parcel or by lot at a public auction and which may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale. If the amount bid for the

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property at the sale is not equal to the price so fixed, the department may declare the property to be purchased by the department for such price or may conduct another sale of the property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the department as prescribed in this section may be sold by the department at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the department of revenue. In all cases of sale the department shall issue a bill of sale or a deed to the purchaser. The bill of sale or deed is prima facie evidence of the right of the department to make the sale and conclusive evidence of the regularity of the proceeding in making the sale. The bill of sale or deed transfers to the purchaser all right, title, and interest of the debtor in the property. The proceeds of any such sale, except in those cases in which the property has been acquired by the department, shall be first applied by the department to reimbursement of the costs of distraint and sale and thereafter in satisfaction of the delinquent account. Any excess that remains in the hands of the department shall be refunded to the debtor. Sums refundable to a debtor may be subject to seizure or distraint by any taxing authority of the state or its political subdivisions or by the department

for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in [this act], there shall be exempt from distraint, seizure, and sale under [this act] such property as is exempt therefrom under the laws of this state.

Section 27. Action for foreclosure of support lien -- satisfaction. Whenever a support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the district court of the county where the real or personal property is or was located and the lien was filed. Judgment may be rendered in favor of the department for the amount due, plus costs. The court shall allow, as part of the costs, the money paid for making and filing the claim of lien and a reasonable attorney's fee. The court shall order any property upon which any lien provided for by [this act] is established to be sold by the sheriff of the proper county to satisfy the lien and costs. The payment o the lien debt, costs, and reasonable attorney fees, at any time before sale, satisfies the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the department shall have judgment for any deficiency remaining unsatisfied. Further levy and sales upon other property o the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of

notice is only necessary for 2 weeks in a newspaper published in the county where the property is located, and if there is no newspaper in the county, then in the most convenient newspaper having a circulation in the county. Remedies provided for in this section are alternatives to remedies provided for in other sections of [this act].

Section 28. Satisfaction of lien after foreclosure proceedings instituted -- redemption. Any person owning real property or any interest in real property against which a support lien has been filed and foreclosure instituted may pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the department. Upon full payment the department shall restore the property to him, and all further proceedings in the foreclosure action shall cease. The person shall also have the right within 240 days after sale of property foreclosed under [section 27] to redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the courts of this state.

Section 29. Debt payment schedule. The department may at any time set a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the debtor.

Section 30. Release of lien or order or return of

seized property -- effect. The department may at any time release a support lien or order to withhold and deliver on all or part of the property of the debtor or return seized property without liability, if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the the same or other property.

Section 31. Emergency filing of liens when payments appear in jeopardy. If the department finds that the collection of any support debt based upon subrogation to or assignment of the amount of support ordered by any district court order is in jeopardy, it may demand under [section 14] immediate payment of the support debt. Upon failure or refusal of the support debtor to immediately pay the support debt, the department may file and serve liens pursuant to [sections 19 and 20], without regard to the 20-day period provided for in [section 15]. No further action under [sections 21, 26, and 27] may be taken until the notice requirements of [section 14] are met.

Section 32. Interest on debts due -- waiver. Interest of 6% per year on any support debt due and owing to the department under [section 13] may be collected by the department. No provision of [this act] may be construed to require the department to maintain interest balance due

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accounts, and interest may be waived by the department, if waiver would facilitate the collection of the debt.

Section 33. Findings and order by department -- judicial review. (1) Upon receipt of the hearing officer's report of findings on the issues designated for hearing, the director may accept the report of findings as the basis for a final order, or upon filing a statement of the legal or substantial factual basis in the record, the director may:

(a) remand all or any portion of the findings for further hearings and findings on specified issues;

(b) disregard that portion of the findings inconsistent with the evidence presented to the hearing officer and proceed to enter a final order based upon the remainder of the findings;

(c) substitute alternative or additional findings of fact on the issues designated for hearing if the substituted findings are supported by a preponderance of the evidence in the record. The director shall then cause his findings and order to be served upon the responsible parent.

(2) It is the intent of [this act] that administrative findings and orders be subject to judicial review but that administrative remedies be exhausted prior to judicial review. The administrative procedures described in [this act] are subject to review in the appropriate district court. Such review will be based upon the transcript and

other pertinent record of the administrative proceedings. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until such remedies are exhausted.

(3) Nothing in [this act] may be construed to abridge or in any way affect the defendant's right to counsel during any and all judicial or administrative proceedings pursuant to [this act].

Section 34. Statutory limitations. Debts ensuing as a result of determinations made through the administrative procedures described in [this act] are subject to statutory limitations as set forth in Title 27, chapter 2.

Section 35. Unidentifiable money held in special account. All money collected in fees, costs, attorney fees, interest payments, or other funds received by the department which are unidentifiable as to the support account against which they should be credited shall be held in a special fund from which the department may make disbursement for any costs or expenses incurred in the administration or enforcement of the provisions of [this act].

Section 36. Charging off child support debts as uncollectible. Any support debt due the department from a responsible parent which the department determines uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. At

any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the debt may be collected. No proceedings or action under the provisions of [this act] may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a support lien filed prior to the expiration of the 6-year period or an assignment of earnings or order to withhold and deliver executed prior to the expiration of the 6-year period.

Section 37. Employee debtor rights protected -- limitation. No employer may discharge an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a support lien or order to withhold and deliver has been served against the employee's earnings. This provision does not apply if more than three support liens or orders to withhold and deliver are served upon the same employer within any period of 12 consecutive months.

Section 38. Assignment of earnings to be honored -- effect. Any person, firm, corporation, association, political subdivision, or department of the state employing a person owing a support debt or obligation shall honor,

according to its terms, a duly executed assignment of earnings presented by the department as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department. Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department shall be released from liability for improper receipt of money under an assignment of earnings upon return of any money so received.

Section 39. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

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Senator Anderson commented that at some point, it stops being an investigative process and begins to be something more serious.

Senator Stimatz stated that he did not think this bill would hurt anyone.

A vote was taken on the motion to do pass. The motion carried with Senator Towe voting no.

CONSIDERATION OF SENATE BILL 221:

Senator Turnage gave an explanation of this bill, which is an act to establish administrative procedures for enforcing support for dependent children.

Jack Vaughn, Administrator of Investigation Division of Department of Revenue, gave a statement in support of this bill.

Garth Youngberg, representing the HEW, office of Child Support from Denver, gave a statement in support.

Senator Turnage stated that he requested Fred Silvester, a specialist from the Department of Social Services of the state of Utah, to come and give us information on this bill.

Mr. Silvester stated that the child support program in Washington hastried to work out a state-to-state exchange so that they can use each other's expertise. He said that in the 30s, the primary reason for going on Aid to Dependent Children was the death of a parent, but now this has changed drastically. He stated that now, 90 per cent are from the desertion of one parent and this placed a new emphasis on the program. He said that one of the reasons why absent parents were not supporting their children was their inability to go efficiently after the parent who disappeared and he stated that child support is one of the lowest priorities in our society.

He gave many statistics and told how the program in Utah has been effectively working.

Mike Garrity, representing the Department of Revenue, said he was in support of a uniformity to these laws across the nation.

Mr. Silvester stated that it is important not to abuse the rights of the absent parents, they send a notice to them, the person has the right to have a hearing, or the right to negotiate with the agency, the state has the right to get an order, once they get an order it makes that order legally enforceable. He stated that this bill provides specific remedies. He said that there is increased collections and more money coming into the general fund.

Senator Van Valkenburg questioned if this money has to be returned to the federal government. Mr. Silvester stated that welfare money is matched by the federal government and they get their matching fund back and the states get their matching funds.

Mr. Youngberg stated that the federal law required that in ADC cases, they had to assign rights to the state, it put the burden on the states and the states had to set up a way to do it. We had to see that the states have the tools to try and collect this money. He stated that the state of Washington and the state of Utah lead the nation in their collection - $36.00 per case per month in the State of Utah and the state of Montana collects $7.73, and is about in the middle of the nation in their collections. He said that often with the husband paying on a regular basis and with other programs, that the wife often becomes self-sufficient.

Senator Turnage question on page 35, line 25 allowing all administrative review-de nova review- and that our administrative procedure act does not lock this in.

Senator Towe stated that this is kind of rulemaking authority and gives a tremendous amount of authority to the department and that he is apprehensive when you turn over to the state this kind of authority. He stated that on page 15, it states a notice is to be send as provided in the rules of civil procedure and if you don't pay in twenty days, liens will be taken on property. He said in the state of Montana, we allow public notice and he said what if a person moves to California and without his knowledge, notice could be served, and he will have a lien against his property. He said there would be an enormous amount of trust put on the department.

Mr. Silvester said that you need rulemaking authority that this is a very logical thing if the department is going to initiate this. He stated that in the case of liens, it is an

important part of the child support enforcement and he stated that in 22,000 child support cases, they found, prior to implementation of this program, that 5 per cent of the absent parents voluntarily paid support. He said that if you rely on the courts to do this, it is ineffective and that you have to have someone who will be responsible for this enforcement. He also stated that Utah has the same provision in their law for notice by public notification and that not one was entered into by public notice; and he felt that the committee would find that it was not being used.

Senator Towe stated that the lien thing really bothers him and that it depends on the good faith of administrators; and if they were not careful about it, that they can abuse it and that the notice could become meaningless. He felt that without court supervision, there is no other area in the law where you can get a lien without going through the court except the internal revenue.

Senator Turnage stated that there was no right of redemption and that he agreed with Senator Towe and that he did not like to think you should have the department of revenue selling property. It was noted that in section 28, there was a redemption period of 240 days after sale of the property.

Senator Anderson stated that these people are not the cream of the crop of our society in that 95 per cent of them have skipped out on their families; and that we have mechanics liens that cover everything from automobile repairs to branding cows and that under the processings, they have regress to the courts.

Senator Towe stated that he hates to get us in a situation where there will be some hardships on some people who really try. He stated that it has become too easy to get a divorce, abandon one family and go start another one; but the guy who is being responsible, we must be careful of and let's not go overboard.

Mr. Silvester stated that in the majority of cases where there is an honest desire to make child support payments, we do not have these problems, but this is designed to get at the hardcores and that you must have some trust in the agency doing their work. He also said that in the state of Utah, they have established a sliding fee schedule for non-welfare receipients and this discourages them for applying for welfare.

Mr. Youngberg testified that the IRS can come in and take any property and that this has been available since 1975 and only one case that has been collected on.

Senator Anderson wondered if Jack Vaughn could supplement the fiscal note assuming a recovery rate similar somewhere between our present rate and what Utah collects.

Mr. Vaughn stated that he had a minimal amount of records now, but there are only three county attorneys that are doing anything now; and he stated that they have agreements with some, but they are not doing anything.

Senator Towe said that it seems that a lien should be through the courts, get the courts involved so that the descretion of the agency is at least reviewed by the court.

Senator Turnage commented that a warranty of distraint becomes a judgment right and this is a potentional right on personal property. He wondered how you could loan a farmer some money if there is a lien on his cattle. Senator Towe said that the lien could be filed, but it could not be executed unless by a court order; and this is more stringent than anybody filing a mechanic's lien or any other kind of lien.

Senator Lensink suggested that Senator Turnage work on this bill and see what they can come up with.

Mr. Vaughn stated that they are all available for comment and they felt this was ranked the highest priority of the bills from the department of revenue.

Senator Lensink noted that the state of Utah has been commended nationwide for their work on this matter.

There being no further business, the meeting adjourned at 11:37 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date Feb 14, 1979

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)			✓
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Please sign & return to the secretary

DATE February 14 1977

COMMITTEE ON Local Government

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check On Support	Check On Opp
Senator W. F. Hafferman	Senator	380	✓	
Julie Styron	Self			
Ruth Applegate	HEW - Office of Child Support	221		
Jim Bibb	HEW - Child Support	221		
Rod Kottak	Dept of Revenue	376	✓	
Jack Vaughn	" " "	221		
Pat Molloy	Alliance of Cemeteries Inc.	380	✓	
Michael H. Hurley	Dept of Revenue	221		
Fred A. Silvester	Dept of Health (Utah)	221	-	
RAYMOND LINDER	MT DEPT REVENUE	376 221	✓	
Jerry Johnson	Mt. State-Local Income Organization	221 376	-	
[illegible]	Self	[illegible]		

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 18, 1979

The forty-second meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink at 9:36 a.m. in room 331 of the capitol building on the above date.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 476:

Joan Mayer from the Legislative Council offered amendments to this bill. Senator Towe moved that the bill be amended on page 11, line 7, by striking the words, "or accept". Senator Turnage suggested an amendment on line 15, page 11, by adding the following language "(2) refusal to take the examination may not be used in any manner whatsoever." Senator Towe moved the amendments offered by Joan Mayer including the extra ones be adopted. The motion carried unanimously.

Senator Turnage moved in Section 15, page 11, line 16, that Section 15 be reinserted. Section 15: "Admissibility of examination or test results and added further: "Providing the results of the examination or test shall not be admitted as evidence in the courts of Montana or in any administrative proceedings." The motion carried with Senator Van Valkenburg, Senator Towe and Senator Healy voting no.

Senator Towe moved that the bill as amended do pass. The motion carried unanimously.

DISPOSITION OF SENATE BILL 221:

Senator Towe moved the amendments offered by the Department of Revenue. The motion carried unanimously. Senator O'Hara moved amendment #1 of amendments offered by Joan Mayer. The motion carried unanimously. Senator Towe moved the bill do pass as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 228:

Joan Mayer from the Legislative Council offered some amendments, which in effect would incorporate Senate Bill 223 into this bill. Senator Turnage moved that the bill be amended on page 2, line 11, by striking "shall" and inserting "may". The motion carried unanimously.

Senate Bill 221, introduced bill be amended as follows:

1. Page 2, line 17
   Strike: "through 39"
   Insert: "through 33"

2. Page 3, line 12
   Strike: "States and who is a recipient of public assistance."
   Insert: "States."

3. Page 17, line 14
   Strike: "[sections 20 and 22]."
   Insert: "[sections 17 and 18]."

4. Page 18, line 3
   Strike: "[sections 19 and 20]"
   Insert: "[section 19]"

5. Page 18, lines 5 and 6
   Strike: "action under [section 21], [section 26], and [section 27] may"
   Insert: "action may"

6. Page 18, line 11
   Strike: "bond satisfactory to the department"
   Insert: "bond, not to exceed the amount of the support debt,"

7. Page 18, line 22
   Strike: "in [sections 16 and 17]"
   Insert: "in [sections 15 and 16]"

8. Page 22, Line 11
   Strike: "[section 33]"
   Insert: "[section 28]"

9. Pages 23 and 24, line 16 (page 23) thru line 24 (page 24)
   Strike: Entire Section
   Insert: "Section 19. Assertion of lien -- filing -- levy upon and sale of property. (1) 21 days after receipt or refusal of notice of debt under the provisions of [section 14] or 21 days after service of the notice of debt or as otherwise appropriate under the provisions of [sections 15 and 16], the department may issue an abstract of any final order in the form of a warrant of distraint under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the support debt within his county for the payment of the debt, interest, and the cost of executing the warrant, and to return such warra to the department and pay to it the money collected within 60 days from the date of the

issuance of the warrant.
(2) The sheriff shall, within 5 days after the receipt of the warrant, file a copy of the warrant with the clerk of the district court of his county and the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the debtor mentioned in the warrant and, in appropriate columns, the amount of the support debt and the date when such copy is filed. The amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. This lien shall have the same preference against the assets of the debtor as claims for taxes.
(3) The sheriff shall proceed to levy upon and sell the property of the debtor in the same manner prescribed by law for executions issued against property upon judgments of a court of record and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.
(4) Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the department shall have judgment for any deficiency remaining unsatisfied.

10. Pages 24 and 25, line 25 (page 24) thru line 17 (page 25)
Strike: Entire section

11. Pages 25, 26 and 27, lines 18 (page 25 thru line 25 (page 27)
Strike: Entire section

12. Page 28, line 1
Strike: "Section 22."
Insert: "Section 20."

13. Page 28, lines 12 and 13.
Strike: "The lien or order to withhold and deliver"
Insert: "The lien or order"

14. Page 28, lines 18 and 19.
Strike: "order to withhold and deliver"
Insert: "order"

15. Page 28, line 20.
Strike: "Section 23."
Insert: "Section 21."

16. Page 29, line 5.
Strike: "[section 26]"
Insert: "[section 19]"

17. Page 29, line 13.
Strike: "Section 24."
Insert: "Section 22."

18. Page 29, line 22.
Strike: "Section 25."
Insert: "Section 23."

19. Pages 30, 31 and 32, lines 6 (page 30 thru lines 5 (page 32).
Strike: Entire section.

20. Pages 32 and 33, lines 6 (page 32) thru lines 6 (page 33).
Strike: Entire section.

21. Page 33, line 7.
Strike: "section 28."
Insert: "section 24."

22. Page 33, line 10.
Strike: "support lien"
Insert: "warrant of distraint"

23. Page 33, line 13.
Strike: "the department"
Insert: "the sheriff"

24. Page 33, lines 16 and 17.
Strike: "under [Section 27]"

25. Page 33, line 21.
Strike: "Section 29."
Insert: "Section 25."

26. Page 33, line 22.
Strike: "time set a"
Insert: "time, after notice to the debtor, set or reset"

27. Page 33, line 25.
Strike: "Section 30."
Insert: "Section 26."

28. Page 34, line 2.
Strike: "to withhold and deliver"

29. Page 34, lines 9 thru 20.
Strike: Entire section.

30. Page 34, line 21.
Strike: "Section 32."
Insert: "Section 27."

31. Page 34, line 22.
Strike: "of 6% per year".

32. Page 34, line 24.
Strike: "department."
Insert: "department at the statutory interest rate payable on judgments recovered in the courts of this state."

33. Page 35, line 3.
Strike: "Section 33."
Insert: "Section 28."

34. Page 35 and 36, lines 25 (page 35) thru lines 2 (page 36).
Strike: "be based upon the transcript and other pertinent record of the administrative proceedings."
Insert: "be conducted pursuant to the provisions of the Montana Administrative Procedure Act."

35. Page 36, line 9.
Strike: "Section 34."
Insert: "Section 29."

36. Page 36, lines 13 thru 20.
Strike: "Entire section".

37. Page 36, line 21.
Strike: "Section 36"
Insert: "Section 30"

38. Page 37, line 13.
Strike: "Section 37."
Insert: "Section 31."

39. Page 37, line 14.
Strike: "discharge an"
Insert: "discharge or prejudice"

40. Page 37, line 17.
Strike: "to withhold and deliver"

41. Page 37, line 19.
Strike: "to withhold and deliver"

42. Page 37, line 22.
Strike: "section 38"
Insert: "section 32"

43. Page 38, line 2.
Strike: "earnings presented".
Insert: "earnings, whether executed voluntarily or pursuant to court order, presented"

44. Page 38, line 15.
Strike: "Section 39."
Insert: "Section 33."

STATEMENT OF INTENT RE: S.B. 221

A Statement of Intent is required for Senate Bill 221 inasmuch as rule making authority is granted to the Department of Revenue.

Senate Bill 221 establishes administrative procedures to facilitate the enforcement of support for dependent children. These procedures provide the Department of Revenue with more effective and efficient procedures to ensure that dependent children are supported by those persons who under the law are primarily responsible for such support.

To enable the Department of Revenue to achieve the objectives of SB 221 rule making authority is granted as follows:

1. In general the Department of Revenue is authorized to "adopt and enforce such rules as may be necessary to carry out the provisions of [this act]" SB 221, §2(9).
2. To limit the responsibility of the Department of Revenue to accept applications for support enforcement services on behalf of persons who are not recipients of public assistance. SB 221, §1 and 2.
3. To establish reasonable fees for support enforcement services provided to persons who are not recipients of public assistance. SB 221, §3.

4. To adopt rules, based on ability to pay, defining the extent of the debt due and owing to the State of Montana by the natural or adoptive parent[s] responsible for the support of children who have received public assistance. Where a district court order establishes the level of support, the debt is limited to the amount provided for by the order. SB 221, §13(4).

STANDING COMMITTEE REPORT

February 20 19 79

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 221

Respectfully report as follows: That Senate Bill No. 221,
introduced bill, be amended as follows:

1. Page 2, line 17.
Following: "through"
Strike: "39"
Insert: "32"

2. Page 3, line 12.
Strike: "and who is a recipient of public assistance"

3. Page 12, line 13.
Following: "minimum"
Strike: "scales"
Insert: "scale"

4. Page 15, lines 13 and 14.
Strike: "lien and foreclosure,"

DO PASS

(Continued)

Chairman

STATE PUB. CO.

5. Page 15, line 14.
Following: "distraint"
Strike: ","
Insert: "and"

6. Page 15, lines 14 and 15.
Strike: ", or order to withhold and deliver"

7. Page 15, line 19.
Strike: "lien and foreclosure or"
Following: "distraint"
Strike: ","
Insert: "and"

8. Page 15, line 20.
Strike: ", or order to withhold and deliver"

9. Page 17, line 2.
Strike: "lien and foreclosure,"
Following: "distraint"
Strike: ","
Insert: "and"

10. Page 17, line 3.
Strike: ", or order to withhold and deliver"

11. Page 17, line 8.
Following: line 7
Strike: "collection"
Following: "warrant"
Insert: "of distraint"

12. Page 17, line 14.
Following: "["
Strike: "sections 20 and 22"
Insert: "section 18"

13. Page 17, line 20.
Following: "--"
Strike: "filing and serving of liens"
Insert: "warrant of distraint"

14. Page 17, line 21.
Following: "release"
Strike: "liens"
Insert: "warrant"

15. Page 18, line 2.
Following: "debt"
Insert: ","

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16. Page 18, line 3.
Following: "may"
Strike: "file and serve liens"
Insert: "issue a warrant of distraint"
Following: "19"
Strike: "and 20"

17. Page 18, lines 5 and 6.
Following: "action" on line 5
Strike: "under [section 21], [section 26], and [section 28]"

18. Page 18, lines 6 and 7.
Following: "on" on line 6
Strike: "such liens"
Insert: "the warrant"

19. Page 18, line 11.
Following: "bond"
Strike: "satisfactory to the department"
Insert: ", not to exceed the amount of the support debt,"

20. Page 18, line 13.
Following: "case"
Strike: "liens filed"
Insert: "warrants issued"

21. Page 18, line 15.
Following: "all"
Strike: "liens filed"
Insert: "warrants issued"

22. Page 18, line 21.
Strike: "hearing and appeal"

23. Page 18, line 22.
Following: "sections"
Strike: "16 and 17"
Insert: "15 and 16"

24. Page 19, line 10.
Following: "financial"
Strike: "liability"
Insert: "responsibility"

25. Page 19, line 19.
Following: "of"
Strike: "liability"
Insert: "financial responsibility"

26. Page 19, line 21.
Following: line 20
Strike: "liability"
Insert: "financial responsibility"

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27. Page 19, line 24.
Following: "financial"
Strike: "liability"
Insert: "responsibility"

28. Page 20, line 12.
Following: line 11
Strike: "liability"
Insert: "responsibility"

29. Page 20, line 19.
Following: "hearing"
Strike: "that"
Insert: ","

30. Page 21, line 1.
Strike: "lien and foreclosure,"
Following: "distraint"
Strike: ","
Insert: "and"

31. Page 21, lines 1 and 2.
Strike: ", or order to withhold and deliver"

32. Page 22, lines 10 and 11.
Following: "to [section"
Strike: "33"
Insert: "27"

33. Page 23, line 14.
Following: line 13
Insert: "["
Following: "this"
Strike: "chapter"
Insert: "act]"

34. Page 23, line 16.
Following: "19."
Strike: "Assertion of lien -- effect"
Insert: "Warrant of distraint -- execution"

35. Page 23, line 20 through line 24 on page 24.
Following: "16]" on line 20
Strike: remainder of line 20 through "satisfied" on line 24 on page 24
Insert: "the department may issue an abstract of any final order in the form of a warrant of distraint under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the support debt within his county for the payment of the debt, interest, and cost of executing

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the warrant and to return the warrant to the department and pay to it the money collected within 60 days from the date of the issuance of the warrant.

(2) The sheriff shall, within 5 days after the receipt of the warrant, file a copy of the warrant with the clerk of the district court of his county and the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the debtor mentioned in the warrant and, in appropriate columns, the amount of the support debt and the date when such copy is filed. The amount of the warrant so docketed is a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. This lien has the same preference against the assets of the debtor as claims for taxes.

(3) The sheriff shall proceed to levy upon and sell the property of the debtor in the same manner prescribed by law for executions issued against property upon judgments of a court of record and is entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

(4) If the net proceeds of the sale, upon application to the debt claimed, do not satisfy the debt in full, the department shall have judgment for any deficiency remaining unsatisfied."

36. Page 24, line 25 through line 19 on page 28.
Strike: sections 20 through 22 in their entirety
Renumber: all subsequent sections

37. Page 28, line 21.
Following: "with"
Strike: "order or lien"
Insert: "warrant or to honor assignment of wages"

38. Page 28, line 23 through line 4 on page 29.
Following: "state" on line 23
Strike: remainder of line 23 through "or" on line 4, page 29

39. Page 29, line 5.
Following: "section"
Strike: "20"
Insert: "19"
Following: "]"
Strike: ";"

40. Page 29, lines 10 and 11.
Strike: "lien, order to withhold and deliver,"

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41. Page 29, line 11.
Following: "distraint"
Strike: ","

42. Page 30, line 1.
Strike: "a lien or order to withhold and deliver or"

43. Page 30, line 2.
Strike: "other"

44. Page 30, line 6 through line 6 on page 33.
Strike: sections 26 and 27 in their entirety
Renumber: all subsequent sections

45. Page 33, lines 7 and 8.
Following: "of"
Strike: "lien after foreclosure proceedings instituted"
Insert: "debt after levy on property"

46. Page 33, line 10.
Following: line 9
Strike: "support lien"
Insert: "warrant of distraint"
Following: "been"
Strike: "filed and foreclosure instituted"
Insert: "issued and levied upon"

47. Page 33, line 13.
Following: "payment the"
Strike: "department"
Insert: "sheriff"

48. Page 33, lines 14 and 15.
Following: "proceedings"
Strike: "in the foreclosure action"
Insert: "on the warrant"

49. Page 33, lines 16 and 17.
Following: "property" on line 16
Strike: "foreclosed under [section 27]"
Insert: "levied upon"

50. Page 33, line 22.
Following: "time"
Insert: "after notice to the debtor"
Following: "set"
Insert: "or reset"

51. Page 33, line 25.
Following: "Release of"
Strike: "lien or order or"
Insert: "distraint,"

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52. Page 34, line 2.
Following: "a"
Strike: "support lien or order to withhold and deliver"
Insert: "distraint"

53. Page 34, line 3.
Following: "debtor or"
Insert: "order the sheriff to"

54. Page 34, lines 9 through 20.
Strike: section 31 in its entirety
Renumber: all subsequent sections

55. Page 34, line 22.
Strike: "of 6% per year"

56. Page 34, line 24.
Following: "department"
Insert: "at the statutory interest rate payable on judgments recovered in the courts of this state"

57. Page 35, line 25 and line 1 on page 36.
Following: "review" on line 25
Strike: remainder of line 25 through "proceedings" on line 1
Insert: "shall be conducted pursuant to the Montana Administrative Procedure Act"

58. Page 36, lines 13 through 20.
Strike: section 35 in its entirety
Renumber: all subsequent sections

59. Page 37, line 9.
Following: line 8
Strike: "support lien"
Insert: "warrant of distraint"
Following: "filed"
Insert: "with the clerk of court"

60. Page 37, lines 10 and 11.
Strike: "or order to withhold and deliver"

61. Page 37, line 14.
Following: "discharge"
Insert: "or prejudice"

62. Page 37, lines 16 and 17.
Following: "that a" on line 16
Strike: "support lien or order to withhold and deliver"
Insert: "warrant of distraint"

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63. Page 37, line 19.
Following: "three"
Strike: "support liens or orders to withhold and deliver"
Insert: "warrants"

64. Page 38, line 2.
Following: "earnings"
Insert: ", whether executed voluntarily or pursuant to court order,"

And, as so amended,
DO PASS

Everett R. Densiw, Chairman.

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SENATE BILL NO. 221: Senator Turnage. It is the responsibility of the state to limit the expenditure of public assistance funds, whenever possible. The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.

RAYMOND LINDER: Department of Revenue. I have a handout. Exhibit #8. I think I should explain why the Department of Revenue goes with this type of legislation. Title 4-D of the Social Security act. It required each state to have a Department of Child Support Enforcement. We believe that this particular administrative procedure will do it, and he went on to list some of the goals. We had 16,900 cases at the end of fiscal 1978 and that seems like a lot of cases.

MIKE GARRITY: Attorney, Department of Revenue. Many times I can understand and know why the legislature is hesitant to create another procedure. He talked about welfare recipients and that most are the product of non-supportive parents. The District Court dockets are extremely over-crowded and the domestic cases are over-burdening our courts. This legislation provides a standard. I think this criteria for bringing a faster judicial decision and for bringing about a child support amendment will relieve the welfare roles.

SENATOR TURNAGE: I can surely appreciate the benefit to the District Court dockets.

REPRESENTATIVE KEEDY: Who is the person obligated to support? Then followed discussion about the wording.

REPRESENTATIVE ROTH: What is the guarantee that the child will receive the money from the parent.

MR. GARRITY: We don't have any policing power in this legislation. We are following the present law.

REPRESENTATIVE SCULLY: Asked about sections of the bill and Mr. Garrity explained.

Mr. Scully commented, I don't see that it limits the court dockets one iota. Then followed discussion about the court access.

MR. GARRITY: Federal law requires that we provide these services. At the present time we are using the District Courts and they are crowding the dockets. He

explained the procedure. Mr. Scully asked him about the definition of ccurt in this bill. What prevents someone from just filing in District Court and Mr. Garrity answered, if they were to go into District Court immediately they would have their own counsel.

REPRESENTATIVE SCULLY: Asked about page 9, line 24, section 2.

MR. GARRITY: I believe that is the administrative procedure.

REPRESENTATIVE SCULLY: Will you have a hearings office in each area? Mr. Garrity said, no, we will have a hearings officer. He gave the Utah statistics, 7400 over two years, 92 hearings on a yearly average.

REPRESENTATIVE SCULLY: What is wrong with your present system, and Mr. Garrity answered, the fact that we have to use the District Courts. Then, Mr. Scully asked, what is the present cost. Mr. Garrity said, approximately 35,000 the first year and 75% federal money. Mr. Scully asked, do you have a right to costs? Mr. Garrity answered, it really ought to defray the costs, the $25 per filing fee.

There was no other discussion and the hearing closed on Senate Bill 221.

SENATE BILL NO. 491: Senator Turnage. This bill limits many claims filed in state courts to the the district level.

REPRESENTATIVE KEMMIS: What is the reason?

SENATOR TURNAGE: The District Court is a little more adequate.

There was no discussion and the hearing closed on Senate Bill 491.

SENATE BILL NO. 511: Senator Turnage. This bill was introduced at the request of the Secretary of States office. This is to make some type of registration of trademark, and to provide for renewal and assignment of trademarks.

MR. BROWN: Explained the Unifrom Trademark Act and the service mark. As it stands now you cannot cancel out a trademark, and we have some that are over 80 years old and we cannot cancel them.

REPRESENTATIVE SCULLY: How long will it take for a cancellation.

Representative Day came in. The question was called and the motion carried with Representatives Anderson, Keedy and Day voting "no".

Representative Lory moved "be concurred in as amended". The motion carried with Representative Anderson and Day voting "no".

There was general discussion about the bills that have been tabled.

HOUSE JOINT RESOLUTION 59: Representative Keyser moved to amend the title by striking "mandatory", and on page 2, line 1, by striking "mandatory". The motion carried with the vote unanimous.

Representative Keyser moved "do pass as amended". The motion carried with Representative Day voting "no".

SENATE BILL NO. 221: Representative Scully explained the amendments. He then went on to explain the federal statute concerning the language on page 7. I made them insert language on page 9, line 9, and page 11, section 10.

There was discussion about the section on the exemption from fees. On page 14 there was discussion about the new language concerning adoptive parents. On page 14, lines 12 and 13, we made them mesh that with the committee bill we just passed. Page 36, section 27 should be taken out completely. On page 38, line 17, this is your waiver privilege and charge off lien and this amendment takes care of that. It should clear it up.

REPRESENTATIVE KEMMIS: I move the adoption of the amendments. The motion carried with the vote unanimous.

REPRESENTATIVE KEEDY: Led discussion of the definitions. They don't go back there and use the terms that they define. He moved to amend by striking the word "minor" and inserting "dependent" all through the bill. The motion carried with the vote unanimous.

REPRESENTATIVE KEEDY: On page 6, following "for" insert "any" strike "provider" insert "debt". On page 6, line 22, strike "enter" and on line 23, strike "to" and strik "an obligation", insert "a responsible". The motion carried with the vote unanimous.

I move to amend page 8, line 15. He asked why the parent was not included. Insert the word "parent" and on line 16 insert "parent". The motion

carried with the vote unanimous. He then moved to amend page 14, line 3, strike "natural or adoptive" and insert "responsible". And on page 14, lines 4 and 5, strike "who are responsible for the support of such children". The motion carried with the vote unanimous.

There was discussion about changing it in the definition rather than amending the word child.

Representative Lory moved "be concurred in as amended" and the motion carried with the vote unanimous. Representative Scully will carry on the floor.

There was no further business at this time and the meeting adjourned at 11:45.

John P. Scully, Chairman

Mary Ellen Connelly, Secretary

STATEMENT OF INTENT RE: SB 221

A statement of intent is required for Senate Bill 221 inasmuch as rulemaking authority is granted to the Department of Revenue.

Senate Bill 221 establishes administrative procedures to facilitate the enforcement of support for dependent children. These procedures provide the Department of Revenue with more effective and efficient procedures to ensure that dependent children are supported by those persons who under the law are primarily responsible for such support.

To enable the Department of Revenue to achieve the objectives of SB 221 rulemaking authority is granted as follows:

1. In general the Department of Revenue is authorized to "adopt and enforce such rules as may be necessary to carry out the provisions of [this act]" SB 221, section 2(9).

2. To limit the responsibility of the Department of Revenue to accept applications for support enforcement services on behalf of persons who are not recipients of public assistance. SB 221, sections 1 and 2.

3. To establish reasonable fees for support enforcement services provided to persons who are not recipients of public assistance. SB 221, section 3.

4. To adopt rules, based on ability to pay, defining the extent of the debt due and owing to the State of Montana by the natural or adoptive parent(s) responsible for the support of children who have received public assistance. Where a district court order establishes the level of support, the debt is limited to the amount provided for by the order. SB 221, section ~~3(4)~~ 12(4).

First adopted by the SENATE COMMITTEE ON JUDICIARY on February 20, 1979.

SB 221

SENATE BILL NO. 221

INTRODUCED BY TURNAGE, S. BROWN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH ADMINISTRATIVE PROCEDURES FOR ENFORCING SUPPORT FOR DEPENDENT CHILDREN."

WHEREAS, it is the responsibility of the state through the department of revenue to limit the expenditure of public assistance funds, whenever possible, in order that such funds not be spent if there are private funds available, or which can be made available by judicial process or otherwise, to partially or completely meet the financial needs of the children of this state. The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.

WHEREAS, the purpose of this act is to provide the state, through the department of revenue, a more effective and efficient way to effect the support of dependent children by the person or persons who, under the law, are primarily responsible for such support and to lighten the heavy burden of the taxpayer, who in many instances is paying toward the support of dependent children while those

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persons primarily responsible are avoiding their obligations.

WHEREAS, common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven wholly effective or efficient in coping with the increasing incidence of financial dependency. The increasing workload of courts and prosecuting attorneys has made such remedies uncertain, slow, and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations.

THEREFORE, it is the intent of this act that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children be augmented by additional remedies as set forth in sections ~~11~~ 12 through ~~32~~ 30 and directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to and not in lieu of existing law. It is declared to be the public policy of the state that this act be construed and administered to the end that children shall be maintained from the resources of

REFERENCE BILL

responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [this act] the following definitions apply:

~~(1) "CHILD" OR "DEPENDENT CHILD" MEANS ANY PERSON UNDER 18 YEARS OF AGE WHO IS NOT OTHERWISE EMANCIPATED, SELF-SUPPORTING, MARRIED, OR A MEMBER OF THE ARMED FORCES OF THE UNITED STATES.~~

~~(1)~~(2) "Department" means the department of revenue.

~~(2)--"Dependent--child"-means-any-person-under-18-years of-age-who-is-not--otherwise--emancipated,--self-supporting, married,--or--a--member--of--the--armed-forces-of-the-United States-and-who-is-a-recipient-of-public-assistance.~~

(3) "Director" means the director of the department of revenue or his authorized representative.

(4) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(5) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state

ordering payment of a set or determinable amount of support money.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(8) "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

(9) "Responsible parent" means the natural or adoptive parent of a dependent child.

(10) "Support debt" means the sum created by the failure to provide support to a dependent child under the laws of this state or the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support.

Section 2. Department of revenue -- powers and duties regarding collection of support debt. (1) Whenever the

department of social and rehabilitation services receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services shall promptly refer the matter to the department of revenue for action under the provisions of [this act], the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of ~~the--person obligated--for--support--or-any-minor-child-in-that-person's custody~~ THE DEPENDENT CHILD OR THE PERSON HAVING LEGAL CUSTODY OF THE DEPENDENT CHILD to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

The Conference Comm. Ammendment dated 4/17 is on P. 7.
Please insert this page in Original Ref. Copy.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts, checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any CIVIL action pursuant to [this act], the department is a real party in interest upon the payment of public assistance. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that obligor for support DEBT provided unless the department has consented to the agreement in writing.

(6) The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do.

(7) The department shall be subrogated to the right of the child or children or person having the care, custody, and control of the child or children to ~~prosecute-or~~ maintain any ~~support~~ CIVIL action or execute any

administrative remedy existing under the laws of the state to obtain reimbursement of money thus spent.

(8) If a district court ~~enters judgment by order for~~ ORDERS an amount of support to be paid by ~~an obligor~~ A RESPONSIBLE parent, the department shall be subrogated to the debt created by the order and the money judgment shall be determined to be in favor of the department. This subrogation shall apply to temporary spouse support orders, AND family maintenance orders, ~~and alimony orders~~ up to the amount paid by the department in public assistance money to or for the benefit of a dependent child or children but allocated to the benefit of the children on the basis of providing necessities for the caretaker of the children.

(9) The department may adopt and enforce such rules as may be necessary to carry out the provisions of [this act].

(10) The department, for the purposes mentioned in [this act], through its director or his authorized representatives, may administer oaths to certify official acts, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

~~(11) The department may initiate any civil proceedings necessary to secure reimbursement from the parent or parents of minor dependent children for all money spent by the state in providing public assistance or services to dependent children.~~

Section 3. Support enforcement services. (1) The department may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support. ~~Actions may be taken under the the provisions of Title 45, chapter 5, the abandonment or nonsupport statutes, or other appropriate statutes of this state, including but not limited to remedies established in Title 45, chapter 5, to establish and enforce the support obligations.~~

(2) The department may establish by rule reasonable standards necessary to limit applications for support enforcement services. These standards shall take into account the earnings, income, and other resources already available to support the person for whom a support obligation exists.

(3) The department may charge a fee as compensation for services rendered in establishment of or enforcement of support obligations. This fee shall be agreed on in writing with the PARENT, custodian, or guardian of the person for whom a support obligation is owed or that person if no PARENT, custodian, or guardian exists. An initiation fee as a portion of the collection fee may be charged the applicant by the department. The department shall by rule establish

reasonable fees for support enforcement services, and the schedule of fees shall be made available to all applicants for support enforcement services. The department may, upon a showing of necessity, waive or defer any such fee.

Section 4. Cooperation by person having custody of child. Any person having the care, custody, or control of any dependent child or children shall cooperate with the department in establishing the paternity of such child and obtaining support payments.

Section 5. Payment of support money collected to support enforcement and collections unit -- notice. If written notice by the department is given to the responsible person or to the clerk of the court, if appropriate, that the children for whom a support obligation exists are receiving public assistance, then any support money paid by the person or persons responsible for support as a result of any action shall be paid through the support enforcement and collections unit of the department of revenue.

Section 6. Petition for support order by married parent with minor children receiving public assistance. (1) Any married parent with minor children, natural or legally adopted, who is receiving public assistance IN THE ABSENCE OF A SUPPORT ORDER may apply to the district court of the county in which the parent resides or in which the spouse may be found for an order upon such spouse, if such spouse

is the natural or adoptive mother or father of such children, to provide for the parent's support and the support of the parent's minor children by filing in the county a petition setting forth the facts and circumstances upon which the parent relies for the order.

(2) If it appears to the satisfaction of the court that the parent is without funds to employ counsel, the department may file a petition on behalf of the parent. If satisfied that a just cause exists, the court shall direct that a citation be issued to the spouse requiring that spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter.

Section 7. Petition for support order by married parent with minor children receiving public assistance -- powers of court. (1) After hearing the petition for an order of support, the court shall make an order granting or denying it and fixing the terms and amount of the support.

(2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, make such decree or orders as are equitable in view of the circumstances of both parties, and punish violations as other contempts are punished.

~~Section 8. Petition for support order by married parent with minor children receiving public assistance -- waiver of filing fees. The court may upon satisfactory~~

~~showing--that--the--petitioner--is--without-funds-to-pay-the filing-fee,-order-that-the--petition--and--other--papers--be filed-without-payment-of-the-fee.~~

Section 8. Financial statements by parent whose absence is basis of application for public assistance -- penalty. (1) Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall complete a statement, under oath, of his current monthly income, his total income over the past 36 months, the number of dependents for whom he is providing support, the amount he is contributing regularly toward the support of all children for whom application for such assistance is made, his current monthly living expenses, and all other information pertinent to determining his ability to support his children. The statement shall be provided upon a demand made by the department. If assistance based upon the application is granted on behalf of the child, additional statements shall be filed as required by the department until the child is no longer receiving public assistance.

(2) Failure to comply with this section is a misdemeanor.

Section 9. Scale of suggested minimum contributions. (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in

determining the amount that a parent should be expected to contribute toward the support of his child under [this act]. The scale shall:

(a) include consideration of gross income;

(b) authorize an expense deduction for determining net income;

(c) designate other available resources to be considered;

(d) specify the circumstances which should be considered in reducing support contributions on the basis of hardship.

(2) The department shall accept and compile pertinent and reliable information from any available source in order to establish a minimum scale of suggested contributions. Copies of the scale shall be made available to courts, county offices, county attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of [this act]. Attorneys admitted to practice in Montana may have access to the minimum ~~scales~~ SCALE of suggested contribution.

(3) No county, court, officer, or agency may be required to use this scale.

Section 10. Central unit for information and administration -- cooperation enjoined -- availability of records. (1) The department shall establish a central unit

to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) To effectuate the purposes of this section, the director may request from state, county, and local agencies all information and assistance as authorized by [this act]. All state, county, and city agencies, officers, and employees shall cooperate in the location of parents who have abandoned or deserted or are failing to support children receiving public assistance and shall on request supply the department with all information available relative to the location, income, and property of the parents.

(3) Any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act.

~~Section 12. Department exempt from fees. No filing or recording fees, court fees, fees for making copies of documents, or fees for service of process may be required~~

~~from the department by any county clerk, county auditor, sheriff, or other county officer for the filing of any actions or documents authorized by [this act] or for the service of any summons or other process in any action or proceeding authorized by [this act].~~

Section 11. Debt to state by natural or adoptive parents -- limitations. (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing the state of Montana by the ~~natural or adoptive~~ RESPONSIBLE parent or parents ~~who are responsible for the support of such children~~ in an amount equal to the amount of public assistance money so paid. IN THE CASE OF AN ADOPTIVE PARENT OR PARENTS, NO DEBT FOR PUBLIC ASSISTANCE PAID MAY ACCRUE PRIOR TO THE DATE OF ADOPTION.

(2) Where there has been a district court order established, the debt shall be limited to the amount provided for by the order.

(3) Where a child has been placed in foster care, and a written agreement for payment of support has been entered into by the responsible parent or parents and ~~the department~~ ANY STATE AGENCY, the debt shall be limited to the amount provided for in the agreement. However, if a court order for support is or has been entered, the provisions of the order shall prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in such agreements or modifications of such agreements based on changed circumstances.

Section 12. Support debt based upon subrogation to or assignment of judgment -- notice -- contents -- action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgment created by a district court order. The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 20 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any district court order to which the department is subrogated or has an assigned interest;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to ~~lien and foreclosure~~, distraint, AND seizure and sale~~, or order to withhold and deliver~~;

(d) a statement that the net proceeds will be applied

to the satisfaction of the support debt.

(3) Action to collect the subrogated or assigned support debt by ~~lien and foreclosure or~~ distraint, AND seizure and sale~~, or order to withhold and deliver~~ shall be lawful after 20 days from the date of service upon the debtor or 20 days from the receipt or refusal by the debtor of the notice of debt.

Section 13. Notice of support liability based upon payment of public assistance -- notice -- contents -- collection warrant -- fair hearing. (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of any dependent child or children. The notice of liability shall be served upon the responsible parent in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the recipient and the name of the child or children for whom assistance is being

paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the responsible parent make answer within 20 days of the date of service to the department stating defenses to liability under [section ~~13~~ 11];

(e) a statement that if no answer is made on or before 20 days from the date of the service the support debt shall be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the responsible parent will be subject to ~~lien and foreclosure~~, distraint, AND seizure and ~~sale, or order to withhold and deliver~~.

(3) If no answer is had by the department to the notice of liability on or before 20 days of the date of service, the support debt shall be assessed and determined subject to the computation and the department shall issue a ~~collection~~ warrant OF DISTRAINT authorizing a collection action under [this act].

(4) If the responsible parent, within 20 days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under [section ~~13~~ 11], the responsible parent may receive a fair hearing pursuant to [~~sections 20 and 22~~ SECTION ~~18~~ 16]. The decision of the department in the hearing shall establish

the obligation of the responsible parent, if any, for repayment of public assistance funds spent to date as an assessed and determined support debt.

Section 14. Finding of support liability based upon payment of public assistance -- ~~filing and serving of liens~~ WARRANT OF DISTRAINT -- bond to release ~~liens~~ WARRANT -- action to collect. (1) If the department reasonably believes that the parent is not a resident of this state or is about to move from this state or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection action to satisfy the support debt, the department may ~~file and serve liens~~ ISSUE A WARRANT OF DISTRAINT pursuant to [~~sections 19~~ SECTION 17 and 20] during the pendency of the fair hearing or thereafter, whether or not appealed. No further action under ~~[section 21], [section 26], and [section 27]~~ may be taken on such ~~liens~~ THE WARRANT until final determination after fair hearing and/or appeal. The department shall in such cases make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The responsible parent may furnish a bond ~~satisfactory to the department~~, NOT TO EXCEED THE AMOUNT OF THE SUPPORT DEBT, during pendency of the hearing or thereafter, and in such case ~~liens filed~~ WARRANTS ISSUED shall be released. If the

decision resulting from the hearing is in favor of the responsible parent, all ~~liens filed~~ WARRANTS ISSUED shall be released.

(2) The department may commence action under the provisions of [this act] to collect the support debt on the date of issuance of the decision resulting from the hearing.

Section 15. Notice and finding of financial responsibility of responsible parent -- administrative procedure. (1) In lieu of the ~~hearing and appeal~~ procedures provided in [sections ~~16 and 17~~ 15 AND 16 13 AND 14], the department may, in the absence of a district court order, serve on the responsible parent a notice and finding of financial responsibility requiring a responsible parent to appear and show cause at a hearing held by the department why the finding of liability and the amount of support liability should not be finally ordered. This notice and finding shall relate to the support debt accrued or accruing under [this act] and/or Title 53, chapter 4, including periodic payments to be made in the future for the period of time any child of the responsible parent is in need. The hearing shall be held pursuant to [this act] and the rules of the department, which shall provide for a fair hearing.

(2) The notice and finding of financial ~~liability~~ RESPONSIBILITY shall be served in the same manner prescribed for the service of a summons in a civil action, in

accordance with the provisions of the Montana Rules of Civil Procedure. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than 20 days from the date of service to request in writing a hearing, notice of which shall be served upon the department personally or by registered or certified mail. If no request is made, the notice and finding of ~~liability~~ FINANCIAL RESPONSIBILITY becomes final. If a request is made, the execution of notice and finding of ~~liability~~ FINANCIAL RESPONSIBILITY shall be stayed pending the decision on such hearing or any direct appeal to the courts from the decision.

(3) The notice and finding of financial ~~liability~~ RESPONSIBILITY shall include:

(a) the amount the department has determined the responsible parent owes, the support debt accrued or accruing, and, as appropriate, the amount to be paid thereon each month, all computable on the basis of the amount of the monthly public assistance payment previously paid or need alleged and the ability of the responsible parent to pay all or any portion of the debt;

(b) a statement of the name of the recipient or custodian and the name of any child for whom assistance is being paid or need is alleged; or a statement of the amount of periodic future support payments for which financial

~~liability~~ RESPONSIBILITY is found;

(c) a statement that the responsible parent may object to all or any part of the notice and finding and request a hearing to show cause why he should not be determined to be liable for any or all of the past and future debt determined and the amount to be paid thereon;

(d) a statement that if the responsible parent fails to request a hearing, that the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed, determined, and ordered by the department and that this debt is subject to collection action;

(e) a statement that the property of the debtor, without further advance notice or hearing, will be subject to ~~lien-and-foreclosure~~, distraint, AND seizure and sale~~, or order-to-withhold-and-deliver~~ to satisfy the debt.

Section 16. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear -- entry of findings. (1) The administrative hearing is defined as a "contested case".

(2) The administrative hearing may be held in the county of residence or other county convenient to the responsible parent.

(3) If a hearing is requested, it shall be scheduled within 30 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the alleged responsible parent under [section ~~13~~ 11] and shall also determine the amount of periodic payments to be made to satisfy past, present, or future liability under [section ~~13~~ 11]. In making these determinations, the hearing officer shall include in his consideration the scale of suggested minimum contributions adopted under [section ~~10~~ 9].

(5) If the responsible parent fails to appear at the hearing, upon a showing of valid service, the hearing officer shall enter a decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed, determined, and subject to collection action. Within 20 days of entry of the order, the responsible parent may petition the department to vacate the order upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(6) The hearing officer shall, within 20 days of the hearing, enter findings, conclusions, and a final decision determining liability and responsibility and/or future periodic support payments. The determination of the hearing officer entered pursuant to this section shall be entered as an order unless such findings are set aside pursuant to [section ~~33~~ 27 25] and shall limit the support debt under

[section ~~13~~ 11] to the amounts stated in the decision.

(7) The decision establishing liability and future periodic support payments is superseded upon entry of a district court order for support to the extent the district court order is inconsistent with the hearing order or decision. In the absence of a district court order the responsible parent may petition the department for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances to require the other party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning party on the nonmoving party in the manner of a summons in a civil action. A hearing shall be set not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

(8) The department, in its original determinations, and the hearing officer, in making determinations based on objections to original determinations or on petitions to modify, shall consider the standards promulgated for determination of support payments used by the district court of the county of residence of the responsible parent.

(9) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under [this chapter ACT] without further necessity of action by the hearing officer.

Section 17. ~~Assertion--of--lien------effect~~ WARRANT OF DISTRAINT -- EXECUTION. (1) Twenty-one days after receipt or refusal of notice of debt under provisions of [section ~~14~~ 12] or 21 days after service of notice of debt or as otherwise appropriate under the provisions of [sections ~~15~~ and--~~16~~ 13 AND 14], ~~a-lien-may-be-asserted-by-the-department upon-the-real-or-personal-property-of-the-debtor.--The-claim of-the-department-for-a--support--debt--not--paid--when--due constitutes--a--lien-against-all-property-of-the-debtor-with priority-of-a-secured-creditor.--This-lien-is--separate--and apart-from-and-in-addition-to-any-other-lien-provided-for-in this--title.--The--lien-is-attached-to-all-real-and-personal property-of-the--debtor--on--the--date--of--filing--of--such statement--with--the-county-clerk-and-recorder-of-the-county in-which-the-property-is-located.-A-lien-against-earnings-is attached--and--is---effective---subject---to---the---service requirements--of--[section--20]--upon-filing-with-the-county clerk-and-recorder-of-the-county-in-which--the--employer--is doing--business--or--maintains--an--office--or-agent-for-the purpose-of-doing-business.~~

~~(2)--Whenever-a-support-lien-has-been-filed--and--there~~

~~is--in--the--possession--of--any--person,-firm,-corporation,~~
~~association,-political-subdivision,--or--department--of--the~~
~~state--having--notice--of--the-lien-any-property-that-may-be~~
~~subject-to-the-support-lien,-the-property-may-not--be--paid,~~
~~released,-sold,-transferred,-encumbered,-or-conveyed,-except~~
~~as--provided-for-by-the-exemptions-contained-in-[sections-22~~
~~and-26],-unless-a-written-release-or-waiver--signed--by--the~~
~~department---has---been---delivered--to--the--person,--firm,~~
~~corporation,---association,---political---subdivision,----or~~
~~department--of--the-state-or-unless-a-determination-has-been~~
~~made-in-a-fair-hearing-pursuant-to-[sections-15-and--16]--or~~
~~by--a-district-court-ordering-release-of-the-support-lien-on~~
~~the-basis-that-no-debt-exists-or--that--the--debt--has--been~~
~~satisfied.~~ IN THE DEPARTMENT MAY ISSUE AN ABSTRACT OF ANY FINAL ORDER IN THE FORM OF A WARRANT OF DISTRAINT UNDER ITS OFFICIAL SEAL DIRECTED TO THE SHERIFF OF ANY COUNTY OF THE STATE COMMANDING HIM TO LEVY UPON AND SELL THE REAL AND PERSONAL PROPERTY OF THE PERSON OWING THE SUPPORT DEBT WITHIN HIS COUNTY FOR THE PAYMENT OF THE DEBT, INTEREST, AND COST OF EXECUTING THE WARRANT AND TO RETURN THE WARRANT TO THE DEPARTMENT AND PAY TO IT THE MONEY COLLECTED WITHIN 60 DAYS FROM THE DATE OF THE ISSUANCE OF THE WARRANT.

~~(2)~~ (2) THE SHERIFF SHALL, WITHIN 5 DAYS AFTER THE RECEIPT OF THE WARRANT, FILE A COPY OF THE WARRANT WITH THE CLERK OF THE DISTRICT COURT OF HIS COUNTY AND THE CLERK SHALL ENTER

IN THE JUDGMENT DOCKET, IN THE COLUMN FOR JUDGMENT DEBTORS, THE NAME OF THE DEBTOR MENTIONED IN THE WARRANT AND, IN APPROPRIATE COLUMNS, THE AMOUNT OF THE SUPPORT DEBT AND THE DATE WHEN SUCH COPY IS FILED. THE AMOUNT OF THE WARRANT SO DOCKETED IS A LIEN UPON THE TITLE TO AND INTEREST IN REAL PROPERTY OR CHATTELS REAL OF THE PERSON AGAINST WHOM IT IS LEVIED IN THE SAME MANNER AS A JUDGMENT DOCKETED IN THE OFFICE OF SUCH CLERK. THIS LIEN HAS THE SAME PREFERENCE AGAINST THE ASSETS OF THE DEBTOR AS CLAIMS FOR TAXES.

~~(3)~~ (3) THE SHERIFF SHALL PROCEED TO LEVY UPON AND SELL THE PROPERTY OF THE DEBTOR IN THE SAME MANNER PRESCRIBED BY LAW FOR EXECUTIONS ISSUED AGAINST PROPERTY UPON JUDGMENTS OF A COURT OF RECORD AND IS ENTITLED TO THE SAME FEES FOR HIS SERVICES IN EXECUTING THE WARRANT, TO BE COLLECTED IN THE SAME MANNER.

~~(4)~~ (4) IF THE NET PROCEEDS OF THE SALE, UPON APPLICATION TO THE DEBT CLAIMED, DO NOT SATISFY THE DEBT IN FULL, THE DEPARTMENT SHALL HAVE JUDGMENT FOR ANY DEFICIENCY REMAINING UNSATISFIED.

~~Section-20.--Service--of--lien.---The-department-may-at~~
~~any-time-after-filing-of-a-support-lien-serve-a-copy-of--the~~
~~lien---upon--any--person,--firm,--corporation,--association,~~
~~political--subdivision,--or--department--of--the--state---in~~
~~possession--of--earnings,--deposits,-or-balances-held-in-any~~
~~bank-account-of-any-nature-that-are-due,-owing,-or-belonging~~

to the debtor. The support lien shall be served upon the person, firm, corporation, association, political subdivision or department of the state either in the manner prescribed for the service of summons in a civil action or by certified mail return with receipt requested. No lien filed under [section 19] shall have any effect against earnings or bank deposits or balances unless it states that amount of the support debt accrued and unless service upon the person, firm, corporation, association, political subdivision or department of the state in possession of earnings of bank accounts, deposits, or balances is accomplished pursuant to this section.

Section 21. Order to withhold and deliver. Issue and service. Contents. Effect. Delivery of property. Bond to release. (1) After service of a notice of debt as provided for in [section 14] stating a support debt accrued or accruing based upon subrogation to or assignment of the amount required to be paid under any district court order or whenever a support lien has been filed pursuant to [section 19], the department may issue to any person, firm, corporation, association, political subdivision or department of the state an order to withhold and deliver property of any kind including but not limited to earnings that are due, owing, or belonging to the debtor, when the department has reason to believe that there is in the

possession of such person, firm, corporation, association, political subdivision, or department of the state property that is due, owing, or belonging to the debtor. The order to withhold and deliver that shall also be served upon the debtor shall state the amount of the support debt accrued and shall state in summary the terms of [sections 22 and 23]. The order to withhold and deliver shall be served in the manner prescribed for the service of a summons in a civil action or by certified mail with return receipt requested.

(2) Any person, firm, corporation, association, political subdivision, or department of the state upon whom service has been made is required to answer the order to withhold and deliver within 20 days, exclusive of the day of service, under oath and in writing and shall make true answers to the matters inquired of therein. In the event there is in the possession of any such person, firm, corporation, association, political subdivision, or department of the state any property which may be subject to the claim of the department, the property shall be withheld immediately upon receipt of the order to withhold and deliver and shall after the 20-day period, upon demand, be delivered to the department.

(3) The department shall hold the property in trust for application on the indebtedness involved or for return

~~without--interest,-in-accordance-with-final-determination-of~~
~~liability-or-nonliability.-In-the-alternative,-there-may--be~~
~~furnished--to--the--department--a--bond--satisfactory-to-the~~
~~department,--conditioned---upon---final---determination---of~~
~~liability.--If--money-is-due-and-owing-under-any-contract-of~~
~~employment,-express-or-implied,-or-is-held--by--any--person,~~
~~firm,-corporation,-or-association,-political-subdivision,-or~~
~~department-of-the-state-subject-to-withdrawal-by-the-debtor,~~
~~the--money--shall--be-delivered-by-remittance-payable-to-the~~
~~order-of-the-department.~~

~~(4)--Delivery-to-the-department-of-the-money--or--other~~
~~property--held--or--claimed-satisfies-the-requirement-of-the~~
~~order-to-withhold-and-deliver.-Delivery--to--the--department~~
~~serves--as--full-acquittance,-and-the-state-warrants-that-it~~
~~shall-defend-and-hold--harmless--for--such--actions--persons~~
~~delivering--money--or-property-to-the-department-pursuant-to~~
~~[this-act].-The-state-also-warrants-that-it-shall-defend-and~~
~~hold-harmless-for-such-actions-persons-withholding-money--or~~
~~property--pursuant--to-[this-act],-except-for-the-exemptions~~
~~contained-in-[sections-22-and-26].~~

~~Section-22.--Certain-amount--of--earnings--exempt--from~~
~~lien-or-order.--Whenever-a-support-lien-or-order-to-withhold~~
~~and--deliver--is--served-upon-any-person,-firm,-corporation,~~
~~association,-political-subdivision,--or--department--of--the~~
~~state--asserting--a--support-debt-against-earnings-and-there~~

~~are-in-the-possession-of--that--person,--firm,--corporation,~~
~~association,--political--subdivision,--or--department-of-the~~
~~state-any-such-earnings,-50%-of-the-disposable--earnings--is~~
~~exempt--and--may--be--disbursed--to--the-debtor,-whether-the~~
~~earnings-are-paid-or-to-be-paid-weekly,-monthly,-or-at-other~~
~~regular-intervals--and--whether--there--be--due--the--debtor~~
~~earnings--for--1--week--or-for-a-longer-period.--The-lien-or~~
~~order-to-withhold-and-deliver-shall-continue-to-operate--and~~
~~require---the---person,---firm,---corporation,--association,~~
~~political--subdivision,--or--department--of--the--state---to~~
~~withhold---the---nonexempt---portion--of--earnings--at--each~~
~~succeeding-earnings-disbursement-interval-until--the--entire~~
~~amount--of--the--support-debt-stated-in-the-lien-or-order-to~~
~~withhold-and-deliver-has-been-withheld.~~

Section 18. Civil liability upon failure to comply with ~~order-or-lien~~ WARRANT OR TO HONOR ASSIGNMENT OF WAGES. Should any person, firm, corporation, association, political subdivision, or department of the state ~~fail-to-answer-to-an~~ ~~order-to-withhold-and-deliver-within-the-time-prescribed--in~~ ~~[this--act],~~--or fail or refuse to deliver property pursuant to the order; or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person; or fail or refuse to surrender upon demand property distrained under [section

26 ~~12 17~~]~~,~~ or fail or refuse to honor an assignment of wages presented by the department~~,~~ the person~~,~~ firm~~,~~ corporation~~,~~ association~~,~~ political subdivision~~,~~ or department of the state is liable to the department in an amount equal to 100% of the value of the debt which is the basis of the ~~lien, order to withhold and deliver,~~ distraint~~,~~ or assignment of wages OR THE VALUE OF THE DISTRAINED PROPERTY, WHICHEVER IS LESS~~,~~ together with costs~~,~~ interest~~,~~ and reasonable attorney fees.

Section 19. Release of excess to debtor. Whenever any person~~,~~ firm~~,~~ corporation~~,~~ association~~,~~ political subdivision~~,~~ or department of the state has in its possession earnings~~,~~ deposits~~,~~ accounts~~,~~ or balances in excess of the amount of the debt claimed by the department plus $100~~,~~ that person~~,~~ firm~~,~~ corporation~~,~~ association~~,~~ political subdivision~~,~~ or department of the state may~~,~~ without liability under [this act]~~,~~ release the excess to the debtor.

Section 20. Banks and savings and loan associations -- service effective only as to branch office served. In the case of a bank~~,~~ bank association~~,~~ mutual savings bank~~,~~ or savings and loan association maintaining branch offices~~,~~ service of ~~a lien or order to withhold and deliver or~~ any other notice or document authorized by [this act] is only effective as to the accounts~~,~~ credits~~,~~ or other personal

property of the debtor in the particular branch upon which service is made.

~~Section 26. Distraint, seizure, and sale of property subject to liens. Whenever a support lien has been filed pursuant to [section 19], the department may collect the support debt stated in the lien by the distraint, seizure, and sale of the property subject to the lien. The department shall give notice to the debtor and any person known to have or claim an interest in the property of the general description of the property to be sold and the time and place of the sale. The notice shall be given to such persons by certified mail with return receipt requested or by service in the manner prescribed for the service of a summons in a civil action. A notice specifying the property to be sold shall be posted in at least two public places in the county in which the distraint has been made. The time of sale shall be not less than 10 or more than 20 days from the date of posting of the notices. The sale shall be conducted by the department, which shall proceed to sell such property by parcel or by lot at a public auction and which may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale. If the amount bid for the property at the sale is not equal to the price so fixed, the department may declare the property to be purchased by the department for such price or may conduct another sale of the~~

property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the department as prescribed in this section may be sold by the department at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the department of revenue. In all cases of sale the department shall issue a bill of sale or a deed to the purchaser. The bill of sale or deed is prima facie evidence of the right of the department to make the sale and conclusive evidence of the regularity of the proceeding in making the sale. The bill of sale or deed transfers to the purchaser all right, title, and interest of the debtor in the property. The proceeds of any such sale, except in those cases in which the property has been acquired by the department, shall be first applied by the department to reimbursement of the costs of distraint and sale and thereafter in satisfaction of the delinquent account. Any excess that remains in the hands of the department shall be refunded to the debtor. Sums refundable to a debtor may be subject to seizure or distraint by any taxing authority of the state or its political subdivisions or by the department for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in [this act], there shall be exempt from distraint, seizure, and sale

under [this act] such property as is exempt therefrom under the laws of this state.

Section 27. Action for foreclosure of support lien -- satisfaction. Whenever a support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the district court of the county where the real or personal property is or was located and the lien was filed. Judgment may be rendered in favor of the department for the amount due, plus costs. The court shall allow, as part of the costs, the money paid for making and filing the claim of lien and a reasonable attorney's fee. The court shall order any property upon which any lien provided for by [this act] is established to be sold by the sheriff of the proper county to satisfy the lien and costs. The payment of the lien, debt, costs, and reasonable attorney fees, at any time before sale, satisfies the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the department shall have judgment for any deficiency remaining unsatisfied. Further levy and sales upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice is only necessary for 2 weeks in a newspaper published in the county where the property is located, and if there is no newspaper in the county, then in the most

convenient-newspaper-having-a--circulation--in--the--county. Remedies--provided--for--in-this-section-are-alternatives-to remedies-provided-for-in-other-sections-of-[this-act].

Section 21. Satisfaction of lien--after--foreclosure proceedings--instituted DEBT AFTER LEVY ON PROPERTY -- redemption. Any person owning real property or any interest in real property against which a support-lien WARRANT OF DISTRAINT has been filed-and-foreclosure--instituted ISSUED AND LEVIED UPON may pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the department. Upon full payment the department SHERIFF shall restore the property to him, and all further proceedings in--the-foreclosure-action ON THE WARRANT shall cease. The person shall also have the right within 240 days after sale of property foreclosed-under-[section-27] LEVIED UPON to redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the courts of this state.

Section 22. Debt payment schedule. The department may at any time AFTER NOTICE TO THE DEBTOR set OR RESET a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the debtor.

Section 23. Release of lien--or--order--or DISTRAINT. return of seized property -- effect. The department may at any time release a support-lien-or--order--to--withhold--and deliver DISTRAINT on all or part of the property of the debtor or ORDER THE SHERIFF TO return seized property without liability, if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the the same or other property.

Section-31.--Emergency-filing-of--liens--when--payments appear--in--jeopardy.---If--the--department--finds--that-the collection-of-any-support-debt-based-upon-subrogation-to--or assignment--of-the-amount-of-support-ordered-by-any-district court-order-is-in-jeopardy,-it-may-demand-under-[section-14] immediate-payment-of--the--support--debt.--Upon--failure--or refusal-of-the-support-debtor-to-immediately-pay-the-support debt,--the--department--may-file-and-serve-liens-pursuant-to [sections-19-and-20],-without-regard-to--the--20-day--period provided--for--in--[section--15].--No--further--action-under [sections-21,-26,-and-27]-may--be--taken--until--the--notice requirements-of-[section-14]-are-met.

Section 24. Interest on debts due -- waiver. Interest of-6%-per-year on any support debt due and owing to the department AT THE STATUTORY INTEREST RATE PAYABLE ON JUDGMENTS RECOVERED IN THE COURTS OF THIS STATE under

[section ~~13~~ 11] may be collected by the department. No provision of [this act] may be construed to require the department to maintain interest balance due accounts, and interest may be waived by the department, if waiver would facilitate the collection of the debt.

Section 25. ~~Findings and order by department~~ ADMINISTRATIVE FINDINGS AND ORDER -- judicial review. ~~(1) Upon receipt of the hearing officer's report of findings on the issues designated for hearing, the director may accept the report of findings as the basis for a final order, or upon filing a statement of the legal or substantial factual basis in the record, the director may~~

~~(a) remand all or any portion of the findings for further hearings and findings on specified issues~~

~~(b) disregard that portion of the findings inconsistent with the evidence presented to the hearing officer and proceed to enter a final order based upon the remainder of the findings~~

~~(c) substitute alternative or additional findings of fact on the issues designated for hearing if the substituted findings are supported by a preponderance of the evidence in the record. The director shall then cause his findings and order to be served upon the responsible parent.~~

~~(2)~~(1) It is the intent of [this act] that administrative findings and orders be subject to judicial

review but that administrative remedies be exhausted prior to judicial review. The administrative procedures described in [this act] are subject to review in the appropriate district court. Such review ~~will be based upon the transcript and other pertinent record of the administrative proceedings~~ SHALL BE CONDUCTED PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until such remedies are exhausted.

~~(3)~~(2) Nothing in [this act] may be construed to abridge or in any way affect the defendant's right to counsel during any and all judicial or administrative proceedings pursuant to [this act].

Section 26. Statutory limitations. Debts ensuing as a result of determinations made through the administrative procedures described in [this act] are subject to statutory limitations as set forth in Title 27, chapter 2.

~~Section 35. Unidentifiable money held in special account. All money collected in fees, costs, attorney fees, interest payments, or other funds received by the department which are unidentifiable as to the support account against which they should be credited shall be held in a special fund from which the department may make disbursement for any costs or expenses incurred in the administration or~~

~~enforcement-of-the-provisions-of-[this-act].~~

Section 27. Charging off child support debts as uncollectible. Any support debt due the department from a responsible parent which the department determines uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. IN THE EVENT A WARRANT OF DISTRAINT HAS BEEN FILED AND THE SUPPORT DEBT HAS SUBSEQUENTLY BEEN CHARGED OFF AS UNCOLLECTIBLE, THE DEPARTMENT SHALL ISSUE A RELEASE OF LIEN. At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the debt may be collected. No proceedings or action under the provisions of [this act] may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a ~~support-lien~~ WARRANT OF DISTRAINT filed WITH THE CLERK OF COURT prior to the expiration of the 6-year period or an assignment of earnings ~~or-order-to-withhold-and-deliver~~ executed prior to the expiration of the 6-year period.

Section 28. Employee debtor rights protected -- limitation. No employer may discharge OR PREJUDICE an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a ~~support~~

~~lien-or-order-to-withhold-and-deliver~~ WARRANT OF DISTRAINT has been served against the employee's earnings. This provision does not apply if more than three ~~support-liens-or orders-to-withhold-and-deliver~~ WARRANTS are served upon the same employer within any period of 12 consecutive months.

Section 29. Assignment of earnings to be honored -- effect. Any person, firm, corporation, association, political subdivision, or department of the state employing a person owing a support debt or obligation shall honor, according to its terms, a duly executed assignment of earnings, WHETHER EXECUTED VOLUNTARILY OR PURSUANT TO COURT ORDER, presented by the department as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department. Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department shall be released from liability for improper receipt of money under an assignment of earnings upon return of any money so received.

Section 30. Severability. If a part of this act is

invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

STATE OF MONTANA

Request No. 135-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 1979, there is hereby submitted a Fiscal Note for Senate Bill 221 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

This proposed bill establishes administrative procedures for enforcing support for dependent children.

ASSUMPTIONS:

1) Under current law, $120,000 would be spent per year in FY 80 and FY 81 for contracted services for lawyers.
2) Under the proposed law, $35,000 would be spent per year in FY 80 and FY 81 for an administrative process to enforce support for dependent children.
3) The expenditure of $35,000 for the administrative process will offset the expenditure of $120,000 for contracted services for lawyers.
4) 75% of these expenditures will be in the form of a grant from the Federal Child Support Enforcement Program, and 25% from General Fund revenues.

FISCAL IMPACT:

The net effect of the passage of this bill will be a reduction in expenditures of $85,000 each year. The remaining $35,000 expenditures will be 75 percent federally funded.

FUNDING INFORMATION:

	FY 80	FY 81
General Fund	$(21,250)	$(21,250)
Other funds	(63,750)	(63,750)
	$(85,000)	$(85,000)

Carolyn Wooring for

BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1/31/79